

April 21, 1992
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

DRUG PARAPHERNALIA

The Committee on Public Services and Safety at its April 1, 1992, meeting requested the City Attorney to return with a draft enabling ordinance allowing the city to prohibit the sale of drug paraphernalia in stores.

Any city ordinance prohibiting the sale of drug paraphernalia would be preempted by state law and void. Current state drug paraphernalia laws contain no provision that allows enabling legislation by cities.

By enacting California Health and Safety Code sections 11014.5 and 11364.7, which define "drug paraphernalia," criminalize its delivery, furnishing or transfer, and provide for forfeiture of all drug paraphernalia, the state completely preempted the field of drug paraphernalia sales. *A&B Cattle Co. v. City of Escondido*, 192 Cal. App. 3d 1032 (1987).

The court in *A&B Cattle Co.* also recognized a conflict in state "drug paraphernalia" laws. Health and Safety Code section 11364.5 requiring the exclusion of minors from businesses selling drug paraphernalia was found inconsistent with 11014.5 and 11364.7 which define "drug paraphernalia" and wholly prohibit the furnishing of it to another. The court resolved the conflict by holding that sections 11014.5 and 11364.7 were the more recently enacted and therefore control.

The following summary of recent developments in drug paraphernalia laws designed to assist law enforcement efforts may be of interest. H&S section 11364.7 was recently amended by Assembly Bill No. 898 (Tucker) which became effective January 1, 1992, (Attachment 1). H&S section 11364.7(a), as amended, makes it a misdemeanor to deliver, furnish, transfer or possess drug paraphernalia. Section (b) makes it a felony to manufacture drug paraphernalia if one knew or should have known it would be used to introduce cocaine, cocaine base, heroin, phencyclidine or methamphetamine into the human body. Section (c) enhances the penalty when a person furnishes drug paraphernalia to another under 18 years of age and at least three years junior. Section (d) allows for business and liquor license revocation for violations. Section (e) allows seizure of drug paraphernalia by any peace officer and subjects

it to forfeiture. H&S section 11364.7 has been improved as a law enforcement tool by the recent amendments.

The City Manager provided an analysis of the difficulties of enforcing drug paraphernalia laws in a memorandum response dated June 1, 1989, to Councilmember Filner and former Councilmember Pratt (Attachment 2). The memorandum specifically notes the following: "Most drug enforcement efforts are directed at felony violations as they encompass the majority of the complaints, and resources are limited." (Last sentence at 2.)

A memorandum of law dated May 1, 1989, and prepared by Deputy City Attorney Joseph M. Battaglino of this office is submitted for information (Attachment 3).

This office will be available to respond to any further questions the Committee may have on drug paraphernalia laws.

Respectfully submitted,

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City Attorney

JMB:mk:520.1(043.1)

Attachment

RC-92-33